IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 145 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALOL KELVANI PRACHARAK MANDALSANCHALIT MAFATLAL G - Petitioner(s)
Versus
JOINT DIRECTOR OF EDUCATION (10+2) & 2 - Respondent(s)

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Appearance :
MS MAMTA R VYAS for Petitioner(s) : 1,
MS MANISHA L SHAH, AGP for Respondent(s) : 1 - 2.
MS MONALI H BHATT for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner school management has challenged the legality of the order dated 28th August, 1998 passed by the Gujarat Higher

Secondary School Services Tribunal. The said order came to be passed in Application No.310 of 1997 filed by respondent No.3 herein.

2. Short facts leading to the present petition are that respondent No.3 claiming to have worked as an Assistant Teacher with the petitioner approached the Education Tribunal by filing the above mentioned application complaining that though he had worked as a full time Assistant Teacher, he was not paid any salary for the work done. Though there is some dispute about the exact tenure of respondent No.3 as an Assistant Teacher with the petitioner-Institute, by virtue of the impugned order passed by the Tribunal, the said issue gets narrowed down. The Tribunal found that respondent No.3 has discharged his duties for the period between 28th June 1993 and 28th July 1995. The Tribunal found that no salary was paid to respondent No.3. The Tribunal also found that he is entitled to salary in the scale of Rs.1640-2900 meant for the post of Assistant Teacher. The Tribunal awarded 12 per cent interest on the said amount due and payable to respondent No.3. For the period after 28.7.95, during which respondent No.3 had claimed to have worked under the interim order passed by the Civil Court, the

Tribunal provided for no remuneration finding that the order of the Civil Court was without jurisdiction.

3. The petitioner herein did not immediately implement the order passed by the Tribunal. Respondent No.3 was therefore constrained to file execution proceedings. It was then that the present petition came to be filed. On the other hand, respondent No.3 did not challenge the order passed by the Tribunal with respect to his non-entitlement of salary beyond 28.7.95. It was only in the year 2005 that respondent No.3 filed Special Civil Application No.12612 of 2005. The said petition came to be disposed of by the order dated 7.7.2005 wherein, the learned single Judge found that no interference is called for in extra-ordinary jurisdiction under Article 227 of the Constitution. The Teacher was however given liberty to make a representation.

4. On the above factual background, learned advocates appearing for the parties have made submissions before this Court. Learned advocate Ms.Vyas for the petitioners submitted that respondent No.3 was not a regularly selected and appointed teacher. He, therefore, cannot claim pay in the regular pay-scale. She further submitted that respondent No.3 had in fact

volunteered to discharge duties for non-remuneration since he was interested primarily on gaining experience certificate. She, therefore, submitted that the orders passed by the Tribunal should be set aside.

5. On the other hand, learned advocate Ms.Monali Bhatt appearing for respondent No.3 opposed the petition. She submitted that there is no dispute that respondent No.3 discharged his duties as Assistant Teacher for the petitioner-School. He is duly qualified possessing educational qualifications of M.A.,D.P.Ed. Having discharged full time duties, he was entitled to receive salary on par with regular teachers.

6. Learned AGP Ms.Shah submitted that it is an issue between the petitioner-School management and respondent No.3 Teacher and the Government has no role to play in the proceedings.

7. Having heard the learned advocates appearing for the parties, I find that the claim of respondent No.3 for salary in the regular scale of pay meant for regularly selected and appointed Assistant Teachers cannot be accepted. The Hon'ble Supreme Court has held that person not appointed on regular basis to a post cannot claim regular pay-scale meant for the regular employees holding the post in question. Reference in this

connection may be made to the decision of the Hon'ble Supreme Court in the case of State of Haryana v. Tilak Raj, AIR 2003 SC 2658. The fact, however remains that undisputedly, respondent No.3 discharged his duties as a full time Assistant Teacher with the petitioner school for the period from 28th June 1993 to 28th July 1995. For the work done, he cannot be left without any remuneration. It will therefore be necessary to provide for appropriate compensation for the work done by him. Learned advocate Ms.Bhatt has placed on record a copy of the calculations of the salary which the said respondent would have received under the order passed by the Tribunal. As per the said calculations, respondent No.3 would have received a total remuneration of Rs.3406/- for the first month of his service and Rs.4605/- for the last month.

8. Considering the overall facts and circumstances of the case, taking into account the fact that respondent No.3 had discharged full time duties as an Assistant Teacher and that he was duly qualified for the said post, I find that compensation at the rate of Rs.3,000/- (Three thousand) per month for the entire duration of service would meet the ends of justice. However, the direction for payment of interest at the rate of 12 per cent till

the actual payment is made requires modification. The respondent himself had approached the Tribunal in the year 1997. On the other hand, the petitioner also consumed substantial time in approaching this Court against the order passed by the Education Tribunal. Taking overall view of the matter and considering the diminishing rate of interest, I find it appropriate that the amount to be paid to respondent No.3 as per this order shall carry simple interest at the rate of 8 per cent from 1997 till its actual payment. With these directions, the order passed by the Tribunal stands modified. The above payment be made to respondent No.3 within a period of three months from today. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)